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July 11, 2019

Ms. Diane Salkie
LPRSA RI/FS Remedial Project Manager
Emergency and Remedial Response Division
USEPA Region 2
290 Broadway, 20th Floor
New York, New York 10007

Re: USEPA Final Approval of the 17-Mile Baseline Ecological Risk Assessment (BERA), Lower Passaic River Study (LPRSA), Diamond Alkali Superfund Site, Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study CERCLA Docket No. 02-2007-2009

Dear Ms. Salkie:

The LPRSA Cooperating Parties Group (CPG) acknowledges USEPA's final approval of the 17-mile BERA.

The CPG incorporated as directed the following disclaimer and an abbreviated version as footnotes into the USEPA-approved 17-Mile BERA, which had been previously provided to the CPG by the United States Environmental Protection Agency (USEPA) to address the concerns of New Jersey Department of Environmental Protection (NJDEP).

"The New Jersey Department of Environmental Protection (NJDEP) acknowledges that the Baseline Ecological Risk Assessment (BERA) for the Lower Passaic River Study Area (LSRPA) 17-mile RI/FS identifies unacceptable risk and a remedial action to address the unacceptable risk is necessary. However, it is NJDEP's position that a single toxicity reference value (TRV) set (No Observable Adverse Effect Level [NOAEL] and Lowest Observable Adverse Effect Level [LOAEL]) that evaluates the more sensitive species and endpoints to characterize risk to invertebrates, fish, birds and wildlife should be selected in a BERA, not two sets of TRVs as presented in this document. The NJDEP's Ecological Evaluation Technical Guidance, August 2018, does not advocate the use of more than one set of TRVs for individual contaminant-receptor pairs. It is the NJDEP's position that, for the LPRSA, use of one conservative TRV set derived for sensitive receptors and sensitive endpoints most clearly demonstrates the degree of risk for individual contaminant-receptor pairs and ensures protection of threatened, endangered and species of special concern."

USEPA's Guidance for Developing Ecological Soil Screening Levels. (2005, OSWER Directive 9285.7-55) defines a toxicity reference value (TRV) as a "dose above which ecologically-relevant effects might occur to wildlife species following chronic dietary exposure and below which it is reasonably expected that such effects will not occur". Identifying studies in the literature that reflected the specific ecological receptors selected in the 17-mile BERA and focus on the specific compounds associated with the site were not always available. This usually required the selection of toxicity studies conducted under a wide variety of testing methodologies and protocols. Common differences in toxicity studies include:

- different test species,
- time of exposure,
- exposure route,
- toxicity endpoints measured,
- sample size of test species, number of treatments tested,
- compounds included in the test (mixtures or single compounds), and
- exposure setting (laboratory or field).

Due to the variation in testing methods, a large number of studies (when available) were examined, and key studies that relate to the assessment endpoints were identified in the 17-mile BERA and selected for deriving appropriate TRVs. This process involved professional judgement, which led to multiple values being generated depending upon the criteria used to evaluate the studies. The processes for risk assessment TRV selection all contain some degree of uncertainty due to the issues identified above and it was concluded by the USEPA and CPG that there were appropriate multiple TRVs that should be presented in the 17-mile BERA to provide risk managers with a better understanding of the inherent risks and uncertainties associated with exposure to compounds in the LPRSA.

Notwithstanding the inclusion at USEPA's direction, the CPG does not admit or adopt the position, conclusion or the implications set forth in the NJDEP's disclaimers. On the contrary, the CPG finds that the use of two sets of TRVs is not precedent setting and is, in fact, not inconsistent with the NJDEP's Ecological Evaluation Technical Guidance. The guidance document states that, in relevant part, *"as with all guidance documents issued by the NJDEP, the person conducting the remediation may deviate from this approach [referring to a single TRV] and propose an alternative TRV based on site-specific circumstances provided that adequate justification is provided."*

Moreover, the CPG notes that USEPA's June 6, 2019 memorandum on peer review of the 17-mile BERA documents the determination by USEPA Headquarters' Office of Land and Emergency Management that *"the use of two TRVs is an acceptable path for an ecological risk assessment"*.

The CPG requests that this letter be included in the Administrative Record for the 17-mile LPRSA operable unit of the Diamond Alkali Superfund Site.

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Finally, CPG reserves its rights to object to, make additional arguments concerning, or otherwise contest NJDEP's statements in the disclaimers.

Please contact me with any questions or comments.

Very Truly Yours,

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Robert Law, Ph.D.
CPG Project Coordinator

cc: Michael Sivak, USEPA
Frances Zizila, USEPA
LPRSA Cooperating Parties Group
CPG Coordinating Counsel

FILE: 3177/20190711 LPRSA BERA Approval Letter - DEP TRV Reponse to EPA